

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) IN EQUITY NO. C-125-MMD
Plaintiff,) Subproceeding: 3:73-CV-00127-MMD-WGC
WALKER RIVER PAIUTE TRIBE,) **[PROPOSED]ORDER REGARDING**
Plaintiff-Intervener,) **DISCOVERY AND MOTION SCHEDULE**
vs.) **AND PROCEDURE**
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
Defendants.)

Pursuant to the *Stipulated Scheduling Order and Discovery Plan* (March 7, 2019) (ECF No. 2437) (Scheduling Order) and the *Stipulation and Order for Extension of Time to Submit Proposal Regarding Discovery Procedure and Agenda for Status Conference, and to Vacate Status Conference of December 18, 2019* (December 12, 2019) (ECF No. 2591) (Extension Order), the United States and Walker River Paiute Tribe (“Tribe”), and the Walker River Irrigation District, the Nevada Department of Wildlife, Lyon County, Centennial Livestock, Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC and Frade Ranches, Inc., The Schroeder Group, California State Agencies (California State Water Resources Control Board, California Department of Fish and Wildlife and the California Department of Parks and Recreation), and Mono County, California, Mineral County, and the Walker Lake Working Group (collectively, the Parties) were to submit a proposal to the Court on or before January 30, 2020 concerning, among other things, coordination of discovery, including sharing discovery, scheduling discovery, and

1 other matters related to discovery and concerning matters related to dispositive or partially
2 dispositive motions (the “Discovery/Motion Proposal”).

3 Pursuant to the Minute Order of December 17, 2019 (ECF No. 2592), the Court scheduled
4 a Status Conference for February 19, 2020 at 10:00 a.m. to, among other things, issue any orders
5 needed to resolve disputes, if any, concerning the Discovery/Motion Proposal among the parties,
6 and to amend the Scheduling Order accordingly. Minute Order of December 18, 2019 (ECF No.
7 2593) further directed the United States to prepare an agenda for that Status Conference to be
8 submitted on or before February 14, 2020.

9 The Parties have again conferred to attempt to resolve the areas of disagreement between
10 them. Based upon their conference, although the Parties have common ground, they also continue
11 to have differences between them concerning the content of the Discovery/Motion Proposal.

12 The Court, having considered the arguments of the parties, and good cause appearing,

13 **IT IS HEREBY ORDERED:**

14 **1. Parties to This Action.** “Plaintiffs” are the United States of America and the
15 Walker River Paiute Tribe as it relates to water rights claims asserted on behalf of the Tribe by the
16 U.S. Bureau of Indian Affairs and the Tribe (and as amended May 3, 2019) and collectively
17 referred to herein as “Plaintiffs.” For purposes of this Order, “Defendants” are those parties that
18 filed answers to Plaintiffs’ Amended Counterclaims on August 1, 2019 who continue to be
19 represented by counsel, and are collectively referred to herein as “Defendants.”

20 **2. Discovery.**

21 **a. Subjects of Discovery.** Discovery will be on the water rights claims for the
22 Walker River Paiute Tribe asserted by the Plaintiffs and as amended on May 3, 2019. As well,
23
24

1 discovery will be on those responses and Affirmative Defenses asserted by Defendants on August
2 1, 2019.

3 **b. Period of Discovery.** As described in more detail, herein, discovery may
4 commence on April 1, 2020, and shall close on July 16, 2021.

5 **c. Disclosure of Lay Witnesses.** Lay witnesses shall be disclosed on April 1,
6 2020 and Parties shall remain subject to the obligation to supplement as required by Rule 26(e)(1).

7 **d. Disclosure of Expert Witnesses.** Expert witnesses shall be disclosed on
8 April 1, 2020 and Parties shall remain subject to the obligation to supplement as required by Rule
9 26(e)(1).

10 **3. Discovery Coordination.** Discovery will be coordinated through coordinating
11 counsel. For Plaintiffs, coordinating counsel will be counsel for the United States, Guss Guarino.
12 For Defendants, coordinating counsel will be counsel for the Walker River Irrigation District,
13 Gordon DePaoli.

14 **4. Dispositive Motions and Motion Coordination.** For dispositive motions
15 contemplated by Fed. R. Civ. P. 12(c) and 56(a) that do not rely on material exchanged through or
16 subject to discovery, the Parties may file such motions at any time. For such dispositive motions,
17 responses to dispositive or partially dispositive motions will be due ninety (90) days after service,
18 and replies in support of dispositive or partially dispositive motions will be due forty-five (45)
19 days after service.

20 For dispositive motions that rely on material exchanged through discovery or subject to
21 discovery, the Parties shall only file such motions according to the schedule specified here once
22 discovery is complete:

23 a. November 15, 2021: dispositive motions.

b. March 1, 2022: responses to dispositive motions.

c. April 15, 2022: replies to dispositive motions.

Plaintiffs and Defendants potentially have common issues to brief. No page limit should be imposed on a brief to the extent that multiple common issues are incorporated into a single brief. To the extent possible, the Party groups (i.e. Plaintiffs and Defendants) shall separately work as a group to file only one brief on any single dispositive issue or the response thereto.

5. Limits on Discovery. Discovery will be conducted in accordance with the Federal Rules of Civil Procedure, applicable local rules of this Court, and this Order.

6. Written Discovery Requests. Exchange of written discovery shall occur between April 1, 2020 to July 30, 2020. Objections to any discovery request will be served with responses to written discovery. Written responses and responsive documents will only be withheld based on a claim of privilege or a motion to the Court for protective order.

a. Interrogatories. Plaintiffs (as a group) and Defendants (as a group) will coordinate interrogatories to avoid repetition and undue burden on a party in responding to interrogatories. The Parties are entitled to 25 interrogatories that will be prepared and served through coordinating counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 33. The total number of interrogatories is limited to 25 for each party group (Plaintiffs and Defendants) that are answered by each opposing principle entity (United States and Tribe for Plaintiffs and six principal groups for Defendants). No Party is required to respond to discovery requests beyond the number specified here. In the event 25 interrogatories are exhausted, the Parties may seek amendment of the limits stated here after conferral between coordinating counsel and for good cause.

1 **b. Request for Production of Documents and Things (“RFPs”).** Plaintiffs
2 (as a group) and Defendants (as a group) will coordinate RFPs to avoid repetition and undue burden
3 on a party in responding to RFPs. The Parties will prepare and serve RFPs through coordinating
4 counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 34.
5 The Parties will be responsible for producing documents in their possession, custody, and control.
6 For the United States, it will be responsible for producing documents in custody and control of the
7 Department of the Interior/United States Bureau of Indian Affairs as well as those agencies that
8 have asserted water right claims in the Walker River Basin of Nevada and California. The total
9 number of RFPs should be limited to 25 for each party group (Plaintiffs and Defendants) that are
10 responded to by each opposing principle entity (United States and Tribe for Plaintiffs and six
11 principal groups for Defendants). No Party is required to respond to discovery requests beyond the
12 number specified here. The Parties will be responsible for producing documents in their possession
13 in accordance with Fed. R. Civ. P. 34. In the event 25 RFPs are exhausted, the Parties may seek
14 amendment of the limits stated here after conferral between coordinating counsel and for good
15 cause.

16 **c. Request for Admissions (“RFAs”).** Plaintiffs (as a group) and Defendants
17 (as a group) will coordinate RFAs to avoid repetition and undue burden on a party in responding
18 to RFAs. The Parties will prepare and serve RFAs through coordinating counsel and responded to
19 also through coordinating counsel in accordance with Fed. R. Civ. P. 36. Plaintiffs (as a group)
20 and Defendants (as a group) are entitled to 25 RFAs that will be served through coordinating
21 counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 36.
22 The total number of RFAs should be limited to 25 for each party group (Plaintiffs and Defendants)
23 that are responded to by each opposing principle entity (United States and Tribe for Plaintiffs and
24

1 six principal groups for Defendants). In the event 25 RFAs are exhausted, the Parties may seek
2 amendment of the limits stated here after conferral between coordinating counsel and for good
3 cause.

4 **7. Responses to Written Discovery Requests.** In response to written discovery, a
5 responding Party may respond to a request for documents by (i) providing a paper copy of the
6 document, (ii) providing a searchable .pdf file through Adobe Acrobat software, or/and (iii)
7 establishing a record repository for inspection and copying. Documents requiring specialized
8 software other than Adobe Acrobat, such as spreadsheet files, may be produced in native format.
9 Although documents might be electronically stored (such as email correspondence, reports, etc.),
10 there is no need to otherwise pursue or produce information referred to as “electronically stored
11 information” that generally refers to backups, duplicates, and underlying signature information
12 (sometimes known as metadata) associated with an electronically stored document. However, a
13 party may request native files for documents that are difficult to understand after they have been
14 produced in the format specified herein or that contain potentially relevant embedded information,
15 and such requests will not be unreasonably denied. Such a request shall be made according to the
16 following protocol:

17 a. The requesting party shall make any such request as soon as reasonably
18 practical after receiving a document production.

19 b. The requesting party shall provide a list of bates numbers of the documents
20 that it is requesting to be produced in native file format.

21 c. Within fourteen (14) days of receiving this request, the producing party will
22 either (a) produce the requested native files to the extent reasonably practicable, or (b) respond in
23 writing, setting forth its position on the production of the requested documents.

1 d. If the parties are unable to agree as to the production of the requested
2 documents in native format, the parties may submit the matter to the Court.

3 The Parties do not need to produce copies of documents that were previously produced or
4 copies of documents that are publicly available (such as published materials one might find on the
5 Internet, news publications, a public repository, or a library). If a Party wishes to rely on the public
6 availability of a document, the responding Party will identify the specific location where the
7 document is available to the public (e.g., specific Internet location, specific library, etc.). If a
8 document has been previously produced, the response will identify the document previously
9 produced, and when, and also refer to the location of it by bates number or otherwise.

10 **8. Expert Discovery.** Discovery from experts will be in accordance with the Federal
11 Rules of Civil Procedure. Provided, however, that all expert witnesses shall be required to submit
12 a report consistent with the requirements of Rule 26(a)(2)(B), even if the witness would not
13 otherwise be required to provide such a report and would only be subject to the requirements of
14 Rule 26(a)(2)(C). The parties do not need to produce copies of documents that were previously
15 produced or copies of documents that are publicly available (such as published materials one might
16 find on the Internet, news publications, a public repository, a library - so long as the documents
17 are identified and their specific location is provided).

18 Opening expert reports will be due on August 14, 2020. Responsive expert reports will be
19 due on January, 15, 2021. Rebuttal expert reports will be due on April 16, 2021. Expert depositions
20 will take place between April 19, 2021 through July 16, 2021.

21 **9. Privileged Materials Located in the Offices of Counsel.** If a party is claiming
22 privilege as to a requested document, it should be placed on a privilege log, regardless of where it
23 is located.

1 **10. Privileged Communications (Attorney-Client Communications and Attorney**
2 **Work Product) and Privilege Log.** Unless expressly stated otherwise, no discovery request
3 should be construed to request communications exclusively between a party (including
4 representatives, employees and agents) and its counsel, and work product created by counsel.
5 Unless such communications are expressly requested or otherwise contain discoverable
6 information (*e.g.*, Fed. R. Civ. P. 26(b)(4)(C)), such materials will not be produced or placed on a
7 privilege log. The parties will follow Fed. R. Civ. P. 26(b)(5)(A); to provide a log of privileged
8 or work product materials subject to any exception which might be applicable.

9 **11. Depositions.** Depositions will be taken in accordance with Fed. R. Civ. P. 30 and
10 31. For any lay witnesses on which Plaintiffs will rely to support water right claims, for any lay
11 witnesses (if any) on which Defendants will rely to support Affirmative Defenses, and for any non-
12 expert persons as contemplated under Fed. R. Civ. P. 30(a), lay depositions may be taken between
13 August 17, 2020 to November 16, 2020. Any remaining lay deposition allowable under Fed. R.
14 Civ. P. 30(a), must be taken no later than July 16, 2021.

15 Expert depositions will be taken in accordance with the schedule set forth in paragraph 8
16 above. The parties will have the right to depose any identified expert or lay witness. Subject to
17 specific agreement(s) otherwise, depositions will occur in the Reno/Sparks, Nevada, metropolitan
18 area, be taken in a single day, and last for a maximum of 7 hours of testimony. Notices of
19 deposition and subpoenas duces tecum directed to a deponent may be served on coordinating
20 counsel by email 30 days before a scheduled deposition. Costs of lay/expert witness deponents
21 (which include but are not limited to witness travel, expense, and time spent preparing for and
22 attending the deposition) will be borne by the Party on whose behalf the lay/expert witness will be
23 called. All other costs associated with depositions (such as rented office space, cost of court
24

reporter, etc.) shall be borne by the Party taking such deposition. For all oral depositions, the Parties request the right of review pursuant to Fed. R. Civ. P. 30(e). The limit in Fed. R. Civ. P. 30(a)(2)(A)(i) of 10 depositions per side will not apply to expert or lay witnesses or to persons who have been identified in initial disclosures or in supplemental disclosures.

12. Fed. R. Evid. 502(b). The parties invoke Rule 502(b) of the Federal Rules of Evidence and agree that in the event of an inadvertent disclosure of privileged/protected material, such privilege or protection is not waived or forfeit by inadvertent disclosure. If a party determines that it has produced a document upon which it wishes to make a claim of privilege, the producing party shall, within 14 days of making such determination, give all counsel of record notice of the claim of privilege. Any party that complies with this paragraph will be deemed to have taken reasonable steps to rectify disclosures of privileged or protected information or materials. If a party identifies a document that appears on its face or in light of facts known to the party to be subject to another party's claim of privilege, the party identifying the potential claim of privilege is under a good-faith obligation to notify the party holding the potential claim of privilege. Recovery, management, and disputed associated with disclosed privileged material will be governed by FRCP 26(b)(5)(B).

13. Documents Located at American Indian Records Repository. When the special procedures to access records at the American Indian Records Repository are known, any party may seek an amendment to this Order, if necessary.

14. Extensions of Modifications of Discovery Plan and Scheduling Order. LR26-4 governs modifications, extensions of discovery plan and scheduling order. Any stipulation or motion to extend a deadline set forth in this Order must be filed with the Court no later than 3 days prior to the deadline sought to be extended.

15. Supersedes Scheduling Order. To the extent there is any conflict between the Scheduling Order (ECF No. 2437) and this Order, the provisions of this Order shall control.

16. Parties May Seek Relief From Court. Nothing in this Order shall prevent any party from seeking permission by stipulation and/or order of the Court for relief from any provision of this Order.

17. **Mineral County and Walker Lake Working Group.** Defendants Mineral County and the Walker Lake Working Group do not anticipate actively engaging in the discovery process described in the paragraphs above, and coordinating counsel for Principal Defendants does not have to coordinate with them in the discovery process. With respect to motions, including dispositive motions, Defendants Mineral County and Walker Lake Working Group will comply with the schedule detailed above, but they and the Principal Defendants are not required to coordinate with respect to motions. Plaintiffs and Principal Defendants agree that with respect to any written discovery served, Defendants Mineral County and the Walker Lake Working Group are entitled to copies of responses to such discovery, and that they are entitled to participate in any scheduled depositions. To the extent that Defendants Mineral County and the Walker Lake Working Group later determine that they in fact need to more fully participate in the discovery process, upon motion and good cause shown, the Court will consider any such request and grant any appropriate relief.

Dated: _____, 2020

UNITED STATES MAGISTRATE JUDGE